IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 7053 OF 2004

Dungarmal S. Doshi .. Petitioner

versus

Mrs.Premlatha C. Metty & ors. .. Respondents

...

Mr.A.A. Syed for B.V. Bukhari for the petitioner.

Mr.S.B. Bobhate for the respondent.

CORAM : D.G. KARNIK, J

DATED : 27th August 2004

P.C:-

1. A decree for possession has been passed against the petitioner on the ground that the petitioner has acquired suitable residential premises A flat admeasuring about 700 sq.ft. situated on the 6th floor at Arihant Towers has been purchased by the petitioner's son who was aged 22 at the time of the purchase. The appellate Court has held that the

acquisition of the flat at Arihant Towers was by the petitioner and no evidence was adduced by the petitioner to show that it was the son who had purchased the flat. The finding recorded by the appellate Court is a possible finding and cannot be interfered with in exercise of a writ jurisdiction under section 227 of the Constitution of India.

2. The petitioner has also acquired in the name of his wife another flat admeasuring about 700 sq.ft. at Tardeo Towers in the year 1996. The only contention raised in respect of this flat is that the flat has been acquired after the suit was instituted and therefore, this cannot be taken into consideration as a ground for eviction. After this flat was purchased, the plaint was amended in 2000-2001 and the ground of acquisition of the flat at Tardeo Towers was added as paragraph no.3A. As held by this Court in Kuresh Saifudding Poonawalla Vs. Santosh Kumar Asaram Rajghariya (W.P. No. 3814 of 1989 decided on 3rd August 2004, Coram D.G. Karnik, J) following the decision of the Supreme Court in B.Banarjee Vs. Anita Panwalla reported in (1975) 1 SCC 166, the suit as regards the amended ground can be considered to be instituted on the date on which the plaint was

amended. So construed, the acquisition of suitable rersidence would be prior to the date of the filing of the amended pleadings and would be a ground for eviction.

3. In any eviction, taking into consideration the fact that the petitioner has acquired two residential flats, this is not a fit case for interference in exercise of a writ jurisdiction under Article 227 of the Constitution of India.

4. Petition rejected.

5. At the request of the learned counsel for the petitioner, the operation of this order is stayed for a period of 8 weeks subject to the petitioner filing an undertaking in the Court on usual terms within a period of one week.

D.G. KARNIK, J